



June 27, 2001

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-2760

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148797.

The City of Austin Industrial Waste Division (the "division") received a request for the following three categories of information concerning industrial waste discharge permit number 74592007:

- (1) All Notices of Violation between January 1, 1999 and the present for Industrial Waste Discharge Permit Number 74592007 (3733 Drossett Drive, Austin, TX 78744).
- (2) Any correspondence concerning Notices of Violation between January 1, 1999 and the present for Industrial Waste Discharge Permit Number 74592007 (377 Drossett Drive, Austin, TX 78744).
- (3) Reports, notes, or other documents discussing compliance for Industrial Waste Discharge Permit Number 74592007 (3733 Drossett Drive, Austin, TX 78744).

You state that information responsive to item number (1) of the request will be made available to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code in

conjunction with the informer's privilege and sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received the requestor's letter dated May 22, 2001. *See Gov't Code § 552.304.*

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* You explain that the City of Austin (the "city") is a law enforcement agency with the power to investigate and prosecute crimes. You further explain that the city has by ordinance designated the city's Water and Wastewater Utility and the city attorney as the city's law enforcement agency with respect to its laws regarding wastewater disposal. Enforcement begins with an investigation by the division and then prosecution by the city attorney. You state that the requested information is directly related to an investigation that is active and ongoing and that disclosure of the requested information would interfere with law enforcement by permitting the subject of the criminal investigation to know the State's investigative techniques and strategies and defeat the State's law enforcement efforts. In addition, you state the city intends to bring criminal charges to enforce regulations regarding the discharge of pollutants. Based upon these representations and a careful examination of the submitted documents, we conclude that the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976)* (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally Gov't Code § 552.108(c); Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976);* Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See Gov't Code § 552.007.*

Because section 552.108(a)(1) is dispositive, we do not address your other claimed exceptions other than to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

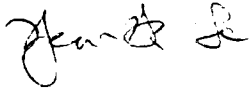
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 148797

Enc. Submitted documents

cc: Mr. David Tuckfield
Vinson & Elkins, L.L.P.
One American Center, Suite 2700
600 Congress Avenue
Austin, Texas 78701-3200
(w/o enclosures)